

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014060745

ORDER DENYING NOTICE OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 11, 2014, Student filed a [Due Process Hearing Request]¹ (complaint) naming Torrance Unified School District (District).

On June 26, 2014, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges that District denied Student a FAPE since June 11, 2012. Specifically, the complaint alleges that Student has autism and that District has failed to address all of his unique needs. Student contends the June 11, 2012 IEP denied Student a FAPE because it should have: 1) added goals to address memory, attention and concentration, visual motor skills, social skills, communication, frustration tolerance, and behavior; 2) placed Student at a non-public school to appropriately address his behaviors, including aggression, anxiety, elopement from school, and lack of safety awareness; and 3) offered Educationally Related Mental Health Services to address Student’s anxiety and social/emotional difficulties. Student contends the February 15, 2013 IEP denied Student a FAPE because it should have: 1) added goals to address peer socialization, behavior, and fine motor skills; 2) continued the Specialized Academic Instruction, occupational therapy, and language and speech therapy at the levels provided in his June 11, 2012 IEP; 3) placed Student at a non-public school; and 4) offered Educationally Related Mental Health Services. Student alleges the February 14, 2014 IEP denied Student a FAPE because it should have: 1) added a goal to address frustration tolerance and contained discrete, clear, measurable goals for pragmatic language and for receptive and expressive language; 2) continued the

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Specialized Academic Instruction, occupational therapy, and language and speech therapy at the levels provided in his June 11, 2012 IEP; 3) placed Student at a non-public school; and 4) offered Educationally Related Mental Health Services. Student alleges that the May 28, 2014 Amendment IEP denied Student a FAPE because District pre-determined that Student's placement for middle school would be on a general education campus and District did not discuss other placement options. Student contends the May 28, 2014 Amended IEP denied Student a FAPE because District again failed to offer an appropriate placement despite Student's neurologist's recommendation that he attend a non-public school, and District again failed to offer Educationally Related Mental Health Services and failed to offer Specialized Academic Instruction, occupational therapy, and language and speech therapy at the levels Student needed. Student's proposed resolution is for District to reimburse Student's parents for the tuition at Lindamood Bell for the summer of 2014 and at Village Glen for the 2014-2015 school year. Student also requests District reimburse Student's parents for the psychoeducational assessment by Dr. Ann Simun, and pay for independent evaluations in the areas of language and speech therapy, occupational therapy, functional behavior analysis, and educationally related mental health services. Student requests compensatory education and a prospective award of language and speech therapy, occupational therapy, and educationally related mental health services. The complaint states Student's name and date of birth, the Student's residence address and school of attendance.

A review of the complaint shows that Student provided ample "facts related to the problem" to provide District the requisite "awareness and understanding of the issues forming the basis of [Student's] complaint." Student alleges that his and his parents' procedural rights were violated by District predetermining his placement in the February 4, 2014 IEP. Student alleges that all of District's offers of goals, placement, and services since June 11, 2012, were not appropriate to meet his unique needs.

In sum, Student's complaint identifies the issues, adequate related facts about the problem(s), and proposed resolutions to permit District to respond to the complaint and participate in a resolution session and mediation. Accordingly, the complaint is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: June 30, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings